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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.
09/160,657	09/25/98	LYDING	J 22010-135/IL

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MM11/0602

EXAMINER

GUERRERO, M

ART UNIT

PAPER NUMBER

2822

DATE MAILED: 06/02/99

Please find below and/or attached an Office communication concerning this application or proceeding.

Commissioner of Patents and Trademarks

Office Action Summary

Application No.
09/160,657

Applicant(s)
Lyding et al.

Examiner
Maria Guerrero

Group Art Unit
2822



☒ Responsive to communication(s) filed on May 7, 1999.

☒ This action is **FINAL**.

☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11; 453 O.G. 213.

A shortened statutory period for response to this action is set to expire 3 month(s), or thirty days, whichever is longer, from the mailing date of this communication. Failure to respond within the period for response will cause the application to become abandoned. (35 U.S.C. § 133). Extensions of time may be obtained under the provisions of 37 CFR 1.136(a).

Disposition of Claims

☒ Claim(s) 40-48, 60, and 61 is/are pending in the application.

Of the above, claim(s) _____ is/are withdrawn from consideration.

☐ Claim(s) _____ is/are allowed.

☒ Claim(s) 40-48, 60, and 61 is/are rejected.

☐ Claim(s) _____ is/are objected to.

☐ Claims _____ are subject to restriction or election requirement.

Application Papers

☐ See the attached Notice of Draftsperson's Patent Drawing Review, PTO-948.

☐ The drawing(s) filed on _____ is/are objected to by the Examiner.

☐ The proposed drawing correction, filed on _____ is ☐ approved ☐ disapproved.

☐ The specification is objected to by the Examiner.

☐ The oath or declaration is objected to by the Examiner.

Priority under 35 U.S.C. § 119

☐ Acknowledgement is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d).

☐ All ☐ Some* ☐ None of the CERTIFIED copies of the priority documents have been
☐ received.

☐ received in Application No. (Series Code/Serial Number) _____.

☐ received in this national stage application from the International Bureau (PCT Rule 17.2(a)).

*Certified copies not received: _____.

☐ Acknowledgement is made of a claim for domestic priority under 35 U.S.C. § 119(e).

Attachment(s)

☐ Notice of References Cited, PTO-892

☐ Information Disclosure Statement(s), PTO-1449, Paper No(s). _____

☐ Interview Summary, PTO-413

☐ Notice of Draftsperson's Patent Drawing Review, PTO-948

☐ Notice of Informal Patent Application, PTO-152

— SEE OFFICE ACTION ON THE FOLLOWING PAGES —

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DETAILED ACTION

1. This communication is based in the Amendment filed on May 7, 1999.

The finality of the rejection of the last Office Action filed May 12, 1999 is withdrawn.

Claims 49-59 are canceled.

Terminal Disclaimer

2. The terminal disclaimer filed on May 7, 1999 disclaiming the terminal portion of any patent granted on this application which would extend beyond the expiration date of U.S. Patent No. 5,872,387 has been reviewed and is accepted. The terminal disclaimer has been recorded.

Claim Rejections - 35 USC § 103

3. The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

4. Claims 40-48, and 60-61 are rejected under 35 U.S.C. 103(a) as being unpatentable over Lisenker et al. (PCT/US94/01669) (WO 94/19829) (cited by Applicant).

Lisenker et al. discloses a semiconductor device having a MOS device, the semiconductor device having an interface between a silicon layer and a gate oxide layer, the semiconductor device being treated with deuterium (see pages 1-14).

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5. Claims 40-48, 60-61 are rejected under 35 U.S.C. 103(a) as being unpatentable over N. S. Saks et al. "Time-dependence of the interface trap build-up in deuterium-annealed oxides after irradiation"..

N. S. Saks et al. teaches a semiconductor device comprising a field effect transistor having a Si-SiO₂ interface being treated with deuterium (see pages 3014-3016).

Response to Arguments

6. Applicant's arguments filed May 7, 1999 have been fully considered but they are not persuasive. Double Patenting Rejections are withdrawn. Claim Rejections 35 U.S. C. 112 are withdrawn. Claim Rejections 35 U.S.C. 103 are maintained.

Claims 40-48, 60-61 are rejected because the patentability of a product does not depend on its method of production. If the product in the product-by-process claim is the same as or obvious from a product of the prior art, the claim is unpatentable even though the prior product was made by a different process. In re Thorpe et al., 227 USPQ 964 (CAFC, 1985) (citations omitted).

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Conclusion

7. Applicant's amendment necessitated the new ground(s) of rejection presented in this Office action. Accordingly, **THIS ACTION IS MADE FINAL**. See MPEP § 706.07(a). Applicant is reminded of the extension of time policy as set forth in 37 CFR 1.136(a).

A shortened statutory period for reply to this final action is set to expire THREE MONTHS from the mailing date of this action. In the event a first reply is filed within TWO MONTHS of the mailing date of this final action and the advisory action is not mailed until after the end of the THREE-MONTH shortened statutory period, then the shortened statutory period will expire on the date the advisory action is mailed, and any extension fee pursuant to 37 CFR 1.136(a) will be calculated from the mailing date of the advisory action. In no event, however, will the statutory period for reply expire later than SIX MONTHS from the date of this final action.

Any inquiry concerning this communication or earlier communications from the examiner should be directed to Maria Guerrero whose telephone number is (703) 305-0162. The examiner can normally be reached on Monday-Friday from 8:00 Am to 4:30 Pm.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Carl Whitehead, can be reached on (703) 308-4940. The fax phone number for this Group is (703) 308-7722.

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Any inquiry of a general nature or relating to the status of this application or proceeding should be directed to the Group receptionist whose telephone number is (703) 305-4900.

MG
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May 26, 1999

A handwritten signature in black ink, appearing to read "B. Dutton", written in a cursive style.

Brian Dutton
Primary Examiner